

REMARKS

Entry of the foregoing and further and favorable reconsideration of the subject application in light of the foregoing amendment and the following remarks:

Applicant respectfully submits that no new matter has been added.

Claims 1-10, 13 and 14 are currently pending, claims 11 and 12 having been withdrawn from consideration pursuant to the Examiner's Restriction requirement under 35 U.S.C. 121 for a single disclosed species for prosecution on the merits.

35 USC § 112 (First and Second Paragraphs)

On page 2 of the Office Action, the Examiner rejects Claims 1-10, 13 and 14 under 35 USC 112 (First Paragraph) asserting lack of support for "a continuous and contiguous tubular substantially non-rigid sheet liner" particularly asserting lack of support for a "contiguous" liner. Accordingly, the Examiner rejects claims 1-10,13 and 14 under 35 USC 112 (Second Paragraph) as indefinite, asserting that lack of support in the Specification for "a continuous and contiguous tubular substantially non-rigid sheet liner" renders the Claim indefinite.

In complete response, Applicant has herein above amended Claim 1 to recite: "a continuous, non-composite, circumferentially closed tubular, substantially non-rigid sheet liner, ... wherein ... the apertures are positioned in a pattern which is regular and repeating and is in an alternating anti-parallel orientation."

Accordingly, support for Claim 1 as presently amended is found generally throughout the Application. Specifically, support for “a continuous, non-composite, circumferentially closed tubular, substantially cylindrical, substantially non-rigid sheet liner” can be found in the Specification at pages 3, 7 and clearly in Figures 1 -3. Support for “a plurality of apertures between the interior side and the exterior side, and the apertures are the apertures are positioned in a pattern which is regular and repeating and is in an alternating anti-parallel orientation” can be found generally throughout the Application and specifically at pages 3, 6 and clearly in Figures 1-3, and particularly in Figure 2 with respect to the regular repeating pattern of orientation.

Accordingly, Applicant respectfully submits that the Claims as amended obviate the rejection under 35 USC 102 (First and Second Paragraphs) and respectfully urges the Examiner to withdraw the rejection.

35 USC § 102.

Henry (US 5241784)

On page 3 of the Office Action, the Examiner rejects Claims 1, and 6-10 under 35 USC 102(b) as anticipated by Henry (US 5241784).

The Examiner asserts that for Claims 1 ,9 and 10, Henry discloses a protection device comprising: “a continuous plastic tubular substantially non-rigid sheet liner with closed bottom end and open top end and a plurality of apertures wherein the apertures are positioned in an alternating anti-parallel orientation.” The Examiner particular directs attention to Figure 6 of the

Henry disclosure, noting that the apertures are capable of preventing passage of vermin and permitting passage of water.

In response, the Applicant respectfully submits that the disclosure of Henry is entirely distinct from the instant invention as presently claimed.

Indeed, Henry discloses a composite single layer, corrugated sheet of material, which must be folded back on itself and fastened together by overlapping the edges, connecting them together by a connecting means (i.e. screw or bolt) in order to form a cylinder. Indeed, Henry further teaches at Claim 7 “holes spaced along each vertical edge of said sidewall for allowing fastening member to pass through and connect said vertical overlapping edges to form said cylindrical shape.” Still further, Henry’s container provides that “the lower edge of said sidewall being the perimeter of the bottom of said container.” Thus, Henry’s sheet necessarily must be bent into a cylinder shape, with overlapping edges that must be fastened to each other. Henry’s folded sheet, is not only composite, but lacks an integral bottom as well. Indeed, the bottom is only provided as a separate element as described at 40 and Claim 6.

Applicant has hereinabove amended Claim 1 of the instant invention to reference the continuous tubular sheet as a “continuous, non-composite” and “substantially topologically plain” further comprising an “integral non-composite bottom.” Applicant’s invention is made from a single unit of material, while the disclosure of Henry is an assembly of multiple, separate parts. In particular, the instant specification and drawings describe a single unit tubular structure, which is not folded or corrugated and which has no requirement for additional components in assembly in clear distinction to the cited prior art reference.

The Examiner asserts at page 4, that Henry discloses rows of diagonally shaped apertures, asserting that “Henry further discloses a plurality of diagonally shaped apertures.” In fact, Henry teaches away from diagonally shaped apertures, throughout the Specification. Moreover, Henry, at Figure 6, discloses a single, non-contiguous “sheet of material having a corrugated shape including undulations extending from one side edge to the opposite side edge,” wherein apertures are positioned at the apex of the undulation. Accordingly, if the non-contiguous corrugated sheet is laid flat, it is apparent that the apertures are not diagonal, but restricted to horizontal or vertical orientation. Apertures that the Examiner has identified as “diagonal” are in fact horizontal or vertical. It is respectfully submitted that any “diagonal” interpretation of the drawing is in fact a misreading of the “perspective” view of the drawing. Indeed, at Column 4, Henry clearly specifies aperture configurations as “horizontal and vertically oriented” in referencing Figure 6.

Accordingly, Applicant respectfully submits that the application as amended is therefore not anticipated by Henry et al and urges the Examiner to withdraw the rejection of Claims 1, and 6-10 under 35 USC 102(b) as anticipated by Henry (US 5241784).

Takita (US 5564223)

On page 4 of the Office Action, the Examiner rejects Claims 1, 2,4 and 5 under 35 USC 102(b) as anticipated by Takita (US 5564223).

The Examiner asserts that for Claim 1, Takita discloses a protection device comprising: “a continuous plastic tubular substantially non-rigid sheet liner with closed bottom end and open top end and a plurality of apertures wherein the apertures are positioned in an alternating anti-

parallel orientation.” The Examiner particular directs attention to Figure 1A and 10 of the Takita disclosure, noting that Takita discloses a closure means as a tie.

In response, the Applicant respectfully submits that the disclosure of Takita is entirely distinct from the instant invention as presently claimed.

Applicant respectfully submits that Takita discloses a porous foam, quick peelable fruit protective wrap. There is nothing in Takita to suggest the anti-parallel orientation of the apertures disclosed by the instant invention, let alone any regularity or importance in the positioning of Takita’s pores. Indeed, Takita describes the formation of the pores as a result of the extrusion process of forming the foam.

Moreover, Takita is specific in describing (and claiming) required essential overlapping folds and essential notches (defined by a pair of spaced apart strips that extend along said sides of said bag) formed in the extrusion process, entirely distinct – and teaching away—from the present invention. In particular, Takita’s Figures 1 and 2 clearly show the essential and required folding and notch elements of the Takita disclosure, which are entirely distinct from the present invention (see for example, Figure 1 of the instant application).

Accordingly, Applicant respectfully submits that the application as amended is therefore not anticipated by Takita and urges the Examiner to withdraw the rejection of Claims 1,2,4, and 5 under 35 USC 102(b) as anticipated by Takita (US 5564223).

35 USC § 103.

The Examiner has rejected Claim 3 under 35 USC 103(a) as unpatentable over Henry et al (US5241784) in view of Beers (US1464801) and rejects claims 13 and 14 as unpatentable over Henry et al (US5241784) in view of Anderson (US 4628634).

In response, Applicant has herein above amended Claim 1 of the instant application to reflect the non-composite nature of the sheet, which in addition to arguments made hereinabove, renders the invention distinct from the disclosure of Henry et al (US5241784). Accordingly, Applicant respectfully submits that the application as amended is therefore not unpatentable over Henry et al in view of Beers or Anderson and therefore urges the Examiner to withdraw the rejection of Claims 3, 13 and 14.

Prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings. The suggestion to combine the references should not come from applicant. Orthopedic Equipment Co. v. United States, 217 U.S.P.Q. 193, 199 (CAFC 1983); Uniroyal, Inc. v. Rudkin-Wiley Corp., 5 U.S.P.Q. 2d 1434 (C.A.F.C. 1988) (“where prior-art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself...Something in the prior art must suggest the desirability and thus the obviousness of making the combination.”).

Applicant respectfully submits that the prior art does not suggest the combination disclosed by the present invention.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that the application and amended claims are now in proper form for allowance and that the amended claims are patentable over the prior art. Therefore, Applicant respectfully submits that the application is now in condition for allowance, and solicits favorable action on all pending claims, namely Claims 1-10, 13 and 14.

If for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. 706.03(d) and 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings. In the event that there are any questions concerning this Amendment, or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of the application may be expedited.

Respectfully submitted,
STEIN & STEIN

By:  1/15/2007

Steven B. Stein
Reg. No.: 43,159

STEIN & STEIN
114 Old Bloomfield Ave.
Parsippany, NJ 07054
(973) 882-8820
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